

REMARKS

With the addition of new claims 13 to 18, claims 1, 3 to 5, 7, 9 to 11 and 13 to 18 are now pending.

Applicants note with appreciation the acknowledgement of the foreign priority claims under 35 U.S.C. §119.

In view of this response, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claim 2 was canceled in the Amendment After A Final Office Action filed October 31, 2007, and filed with the RCE of December 14, 2007. Therefore, any rejection of claim 2 is moot.

With respect to page two (2) of the Office Action, claims 1, 3 to 5, 7 and 9 to 11 were rejected under 35 U.S.C. § 112, first paragraph, as to the written description requirement. Specifically, the Office Action asserts that the feature in which “for a detection of cornering, no energy recuperation is performed,” as provided for in the context of claims 1 and 7, “is narrower than the original disclosure” (*see* Office Action, p. 2). The asserted subject matter in claims 1 and 7 has been canceled without prejudice, thereby rendering moot the present rejections as to those claims.

With respect to page three (3) of the Office Action, claims 1, 3 to 5, 7 and 9 to 11 were rejected under 35 U.S.C. §103(a) as unpatentable over JP 10-329681 (JP ‘681) in view of JP 11-205905 (JP ‘905).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness

cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

The independent claims 1 and 7, as presented, include features that are not disclosed or suggested in either JP ‘681 or JP ‘905. Specifically, claims 1 and 7, as presented, provide that when the driven-axle is a rear axle, a raising in rear axle breaking force is limited by a torque limit, the torque limit being determined by a force-locking stress factor and for a detection of cornering, breaking torques applied to wheels on the rear axle are reduced. according to a ramp with starting point at an upper torque curve, the upper torque curve being determined by the torque limit. The JP ‘681 reference does not disclose the feature of a raising in rear axle breaking force that is limited by a torque limit, the torque limit being determined by a force-locking stress factor, as provided for in the context of the claimed subject matter. Moreover, any review of JP ‘905 makes it plain that it simply does not disclose (or suggest) the features now presented in claims 1 and 7. Therefore, claims 1 and 7, as presented, are allowable.

Therefore, for at least these reasons, claims 1 and 7 are allowable, as are their dependent claims 3 to 5 and 9 to 11. Withdrawal of the rejections of these claims is therefore respectfully requested.

New claims 13 to 18 do not add new matter and are supported by the specification. Furthermore, new claims 13 to 17 depend from claim 1, as presented, and new claim 18 depends from claim 7, as presented, and are therefore allowable for at least the same reasons as claims 1 and 7, as presented.

Accordingly, it is respectfully submitted that claims 1, 3 to 5, 7, 9 to 11 and 13 to 18 are allowable.

Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

Dated: 5/14/2008

By: 

Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646

33,865

AdmC
DEPTA